SUPREME COURT, U. S.
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MICHAEL RODAK, JR.,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1180

TIIDEE PRODUCTS, INC.,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD

and

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT

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PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT

Tiidee Products, Inc. ("Tiidee" or "the Company") petitions for a writ of certiorari, before judgment of the United States Court of Appeals for the District of Columbia Circuit, to review that portion of the supplemental decisions and orders of the National Labor Relations Board in the instant cases that granted attorney's fees, as well as litigation and investigation costs, to both the Government and the charging party Union incurred in the prosecution of these cases before the Board and the courts (Nos. 72-1691 and 1692 in the court below).

OPINIONS BELOW

The supplemental decisions and orders of the National Labor Relations Board, now pending on petitions for review before the Court of Appeals, are officially reported, but unpublished as of yet, at 194 N. L. R. B. No. 198 and 196 N. L. R. B. No. 27 and are printed at App. pp. 83 and 98, respectively. The original decisions of the Court of Appeals and of the Board are reported, respectively, at 426 F. 2d 1243 (D. C. Cir. 1970) *cert. den.*, 400 U. S. 950 (1970); 440 F. 2d 298 (D. C. Cir. 1970); 174 N. L. R. B. 705; and 176 N. L. R. B. 969 and are printed respectively at App., pp. 109, 132, 45, and 81.

JURISDICTION

The supplemental decisions and orders of the Board were issued on January 24, 1972 and April 6, 1972. App., pp. 83 and 98. Cross-petitions for review under 29 U. S. C. 159(f) were thereafter filed by the charging party Union and Tiidee. The cases were consolidated and briefed in the United States Court of Appeals for the District of Columbia Circuit, as Case Nos. 72-1691, 72-1692, 72-1080 and 72-1365, and oral argument was held on September 24, 1973 before a three judge panel of that Court (Robb, *J.*; Tamm, *J.*; and MacKinnon, *J.*). Jurisdiction in this matter before rendition of judgment by the Court of Appeals is conferred on this Court by 28 U. S. C. § 1254(1) and 28 U. S. C. § 2101(e).

QUESTIONS PRESENTED

On December 4, 1973, this Court granted review in *N. L. R. B.* v. *Food Store Employees Union, Local 347, Almalgamated Meat Cutters and Butcher Workmen of North America*, No. 73-370, 42 U. S. L. W. 3326 ("*Food Store Employees*"), where the Court of Appeals for the District of Columbia, relying upon the supplemental Board decisions in the present case

App., pp. 83 and 98), without remand to the Board, taxed a respondent with the litigation expenses incurred by both the Board and the charging party in the preparation and trial of an unfair labor practice case before the Board and the courts. In *Food Store Employees*, however, because of the peculiar posture of that case including the absence of the respondent as a party thereto, the following threshhold issues, presented in the instant petition, are not now before the Court:

1. Whether the Board and/or the courts have the authority under the National Labor Relations Act, 29 U. S. C. § 158, *et. seq.* ("the Act") to order a respondent to reimburse the Board, a charging party, or both for expenses incurred in the investigation, preparation and conduct of an unfair labor practice case.

2. Assuming *arguendo* the authority to impose such a remedy, must the exercise of such power be rationally related and reasonably limited, i.e., bear a proximate causal connection, to the actual conduct of the respondent or, as in the present case, may such a remedy be imposed subsequent to the date when the respondent acceded to the Board's findings and offered to comply with its obligations under the Act?

STATUTE INVOLVED

The portion of the Act relevant to this case, Section 10(c) of the National Labor Relations Act, 61 Stat. 146 as amended, is set forth in the Appendix, p. 136.

STATEMENT OF THE CASE

1. The Initial Board Decisions

On February 24, 1969, the Board found that the Company violated Sections 8(a)(1), (3) and (5) of the Act. App., p. 45; 174 NLRB 705 (*"Tiidee I"*). The 8(a)(5) violation consisted of an improper refusal to bargain with the Inter-

national Union of Electrical, Radio and Machine Workers, AFL-CIO ("the Union") following its selection by a majority of the voters in a Board-conducted election.[1] To remedy this violation and others, the Board ordered the Company to cease and desist from such unlawful conduct, to bargain with the Union, to post an appropriate notice and to engage in other affirmative acts. Although rejecting the Union's request for additional relief, including a proposed "make-whole" remedy,[2] the Board issued a "broad order" forbidding the Company from "in any other manner interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act."

On June 24, 1969—prior to appellate review of *Tiidee I*—the Board found that the Company had engaged in other unfair labor practices, including a violation of Section 8(a)(5) by the unilateral promulgation of work rules and hiring procedures. App., p. 81; 176 NLRB 969 (*"Tiidee II"*).[3]

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1. The refusal to bargain was predicated on the Company's original position—asserted at the Board level only when the Company was not represented by counsel—that the Board's Regional Director acted improperly in overruling the Company's objections to the election. A refusal to bargain was the only means whereby the Company could judicially contest the Regional Director's decision. See, e.g., *Boire* v. *Greyhound Corp.*, 376 U. S. 473, 481 (1964).

2. The "make-whole" remedy, sought by the Union and rejected by the Board throughout these proceedings, would have required the Company to pay an amount equal to the alleged "losses incurred by employees based on what [it is assumed] would have been agreed upon had the employer bargained lawfully [and] . . . losses [allegedly] incurred by the Union for initiation fees and dues as well as [its organizational expenses] in securing certification." Legal Department Report to Convention of International Union of Electrical Workers, 172 Daily Lab. Rep. E-1, E-3 (BNA, Sept. 3, 1970). For a further statement of what the Union contemplated by a "make-whole" remedy, see Judge MacKinnon's dissenting opinion in *Tiidee I* at 426 F. 2d 1243, 1254 (App., p. 125).

3. The Company was still unrepresented by counsel in this succeeding round of litigation. It therefore continued to act unilaterally on the mistaken assumption that the Union's certification was invalid. See n. 1, *supra*.

2. The Initial Judicial Litigation

The Union petitioned the District of Columbia Court of Appeals in *Tiidee I* to review the Board's refusal to grant its request for additional relief and the Board cross-petitioned for enforcement of its order. The Company did not contest then, nor has it contested thereafter, the Board's 8(a)(5) order.[4] On April 3, 1970, the Court of Appeals enforced the Board's order and, over the dissent of Circuit Judge MacKinnon, concluded that the Board "had not proved a sufficient justification" for its refusal to award an additional 8(a)(5) remedy. This view was predicated on the belief that, although the Board had made no such finding, the Company had engaged in a "frivolous" refusal to bargain. The case, as a result, was remanded to the Board "with a directive to make supplementary findings in the event the Board determines on remand that it should not grant any make-whole relief, in whole or in part . . . [or] believes that alternative remedies, beyond those already granted, are more appropriate". 426 F. 2d at 1253; App., p. 125.[5] The principal question thus became, and remained until the Board's supplemental decisions, an issue interjected by the

4. Upon the commencement of litigation before the Court of Appeals, the Company engaged counsel who advised that it comply with the Board's bargaining order. As a result, the Company stipulated to the 8(a)(5) violation in its brief to the Court and, following issuance of the Court's decision, promptly notified the Board of its desire to comply fully with the affirmative and negative provisions of its order. The Board, however, indicated that no compliance proceedings would be initiated until the completion of litigation although voluntary efforts were not prohibited—a suggestion which the Company readily adopted.

5. The Court's December 23, 1970 decision in *Tiidee II* (440 F. 2d 298), issued by the same majority again over Circuit Judge MacKinnon's dissent, remanded that case to the Board "for further consideration of the make-whole claim in light of . . . Tiidee II". Judge MacKinnon argued: (1) "the Board already has ample power under the remand by the majority in Tiidee I to grant all necessary remedial relief that is requested here"; (2) "this is not as strong a case as Tiidee I for the make-whole relief requested . . ."; and (3) "the majority are remanding the case here on the remedial relief question principally because of the cumulative effect of the facts here . . ." 440 F. 2d at 299 (App. p. 135).

Union: whether the Board was empowered to grant a "make-whole" remedy and/or other unprecedented remedies, and, if so, whether and to what degree such remedies were appropriate in the circumstances of this case.

A critical decision in resolving this question is *H. K. Porter Company* v. *N. L. R. B.*, 397 U. S. 99 (1970), which issued in the interval between oral argument and the decision by the Court of Appeals. The Company, therefore, petitioned the Court to reconsider its position in light of a full expression of the parties' views with respect to *Porter* as well as the Board's intervening decision in *Ex-Cell-O Corporation*, 185 NLRB No. 20, *sum. rev'd* and *rem'd. sub. nom. U. A. W.* v. *N. L. R. B.*, 449 F. 2d 1046 (1971), *rem'd vac't* and *dec. enf'd.*, 449 F. 2d 1058 (1971), where the Board expressly rejected the Court majority's views in *Tiidee I* and concluded that, by virtue of *Porter* and Section 8(d) of the Act, it had no authority to issue a "make-whole" remedy. These petitions were denied on September 21, 1970, the Court noting that the Company had filed a petition for certiorari to this Court on the remedial issue. The petition for certiorari, supported by the Union and opposed by the Board on the basis that the case "was not ripe for review" (Memorandum in Opp. in S. Ct. No. 654, O. T. 1970, p. 3), was denied, Mr. Justice Stewart being of the opinion that certiorari should be granted, by this Court on December 7, 1970. 400 U. S. 950.

3. The Board's Decisions on Remand

Despite the Company's persistent efforts to have the remand expeditiously resolved, the Board's supplemental decision in *Tiidee I* did not issue until January 21, 1972, more than two years subsequent to the denial of certiorari, and the supplemental decision in *Tiidee II* was further delayed until April 6, 1972. In *Tiidee I*, the Board, while again finding that it could not and should not order a "make-whole" remedy, adopted *pro forma* the Court's characterization of Tiidee as a frivolous liti-

gator and granted various additional 8(a)(5) remedies[6] including a requirement that the Company "reimburse the Board and the Union for their expenses incurred in the investigation, preparation, presentation, and conduct of these cases . . . in both the Board and court proceedings." 194 NLRB No. 198; App., p. 91. The Board subsequently refused to reconsider this decision although, as the Company urged in its post-decision motion, the award of litigation expenses had never been argued, except peripherally, in any of these lengthly proceedings, had not been urged as appropriate relief by the Board's General Counsel, and was inconsistent with the Board's own recent opinion in *Food Store Employees* (191 NLRB No. 146 (1971)). The Board, moreover, over the dissent of Chairman Miller and reluctant concurrence of Member Kennedy,[7] subsequently extended its *Tiidee I* remedy to *Tiidee II* on the basis that, notwithstanding a prior determination that there was "no merit" to a motion to consolidate the two cases (App., p. 84, n. 3), the proceedings were nevertheless so "inextricably intertwined . . . as to require the conclusion that it was part of the same pattern of . . . litigation." 196 NLRB No. 27; App., p. 100.

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6. Such additional remedies included the obligation that the Company (1) mail copies of the Board notice to each unit employee at his home; (2) that the Union be given reasonable access to the Company's bulletin boards during the period of contract negotiations; and (3) that the Company furnish the Union with a list of the names and addresses of its employees and keep said list current for a one year period. App., p. 92.

7. In Chairman Miller's opinion the imposition of litigation expenses in *Tiidee II* was wholly unwarranted since there was no finding that "the defense here was asserted frivolously . . . [The Company's] unfair labor practices . . . are no more extensive than those committed by both unions and employers in a considerable percentage of the 800 or so cases we review each year." App., p. 103. Member Kennedy concurred in the litigation reimbursement remedy only because he believed such a result was compelled by the "law of the case" once the Board had accepted the remand. App., p. 101, n. 8.

4. The Subsequent Judicial Litigation

Petitions to review the Board's supplemental orders were thereafter filed by both the Company and the Union[8] in the District of Columbia Court of Appeals, briefed, orally argued and are now awaiting decision. In the interim, however, another panel of that Court reversed the Board's decision in *Food Store Employees* and, based on the Board's supplemental decisions in *Tiidee*, issued, without remand, a litigation cost order similar to that which the Board had approved in *Tiidee*. This Court, on the Board's petition, has now agreed to review the propriety of that action in No. 73-370, but has declined to permit the employer in that case, Heck's, the right to intervene. See 42 U. S. L. W. 3333 (December 4, 1973). Hence, the issue before the Court *assumes* two questions which would be otherwise controverted by a respondent: (1) whether either the Board or the courts possess the power to order a litigation cost remedy; and (2) whether such relief was appropriate in *Food Store Employees*. Instead, the issue presented in *Food Store Employees* is limited to whether a court of appeals could issue a litigation cost remedy *on its own* without remand to the Board. A grant of the present petition, by contrast, would permit adjudication of the merits of the basic threshhold assumptions.

8. The Company, in Nos. 72-1691 and 1692, sought review of the additional remedies, in particular the award of litigation costs, ordered by the Board while the Union, in Nos. 72-1080 and 72-1365, sought review of the failure to grant a "make-whole" remedy.

REASONS FOR GRANTING THE WRIT

I. The Questions Presented in This Case Are Integrally Intertwined With Those Which This Court Has Agreed to Review in Food Store Employees and Should Be Decided in Conjunction With That Case

Admittedly, the grant of a writ of certiorari before judgment is necessarily limited, as stated in Rule 20 of this Court, to exceptional circumstances. One such special situation is where "there is a close relationship of [an] important question raised to"[9] one that is already pending before the Court.[10] The utilization of a certiorari before judgment procedure is especially desirable where the related matter is pending before the same appellate court which previously decided the case accepted by this Court making it likely that the two cases will be disposed of in the same manner. See, e.g., *Taylor* v. *McElroy*, 358 U. S. 918, 360 U. S. 709, 710 (1959).

The present petition not only meets these tests but presents an even more compelling consideration: the Court of Appeals decision in *Food Store Employees* was expressly predicated upon the Board's supplemental decisions in the present cases. The question of the appropriate tribunal to grant a litigation cost remedy—the issue presented by the Government in *Food Store Employees*—is also largely academic if, as the Company has contended in this case, *neither* tribunal has such power. The instant

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9. *Porter* v. *Dicken*, 328 U. S. 252, 254 (1946).

10. See, e.g., *Hannah* v. *Slawson*, 363 U. S. 420 (1960); *United States* v. *Thomas*, 361 U. S. 950 (1960); *McCulloch* v. *Sociedad Nacional*, 372 U. S. 10, 12 (1963); *Hannah* v. *Larche*, 363 U. S. 420, 422, n. 3 (1960); *McElroy* v. *Guagliardo*, 361 U. S. 281, 283 (1960); *Reid* v. *Covert*, 354 U. S. 1, 5 (1957); *White* v. *Mechanics' Securities Corp.*, 269 U. S. 283, 299 (1925); *Johnson* v. *United States Shipping Board*, 280 U. S. 320, 324-325 (1930); and *Graham & Foster* v. *Goodcell*, 282 U. S. 409, 411-412, 415, n. 2 (1931).

petition presents questions which, accordingly, should be decided together with *Food Store Employees.*[11]

Resolving the instant petition in combination with *Food Store Employees,* in addition to permitting a full decision on all aspects of the issue presented in that case, would also insure a proper adjudicatory context and adequate representation of all interests involved. The employer in *Food Store Employees* is not before this Court. The respondent's interest, as a result, is presently unrepresented. Nevertheless, it is the respondent who will have to principally bear the effect of this Court's decision. The present posture of *Food Store Employees* thus offends the spirit of this Court's decision in *United Automobile Worker's* v. *Scofield,* 382 U. S. 205 (1965), as well as the principles recently articulated in such standing cases as *Sierra Club* v. *Morton,* 405 U. S. 727 (1972). Granting the instant petition, and deciding this case in conjunction with *Food Store Employees,* would rectify this undesirable decisional posture.

II. The Board's Brief in Food Store Employees Underscores the Interrelationship of That Case with the Instant Case

Submission of the present petition was withheld until the Board filed its brief in *Food Store Employees.* That brief, which was filed with the Court on January 23, 1974, dramatically demonstrates the necessity of deciding the instant case in conjunction with *Food Store Employees.* The Board's brief discusses the present case on virtually every page. It also vigorously argues for affirmance of the Board's purported *Tiidee* distinction, in awarding litigation costs, between situations where

11. Alternatively, this Court could accomplish the same result by, on its own motion, postponing decision in *Food Store Employees* until after the Court of Appeals has resolved this case. See, e.g., *Red Lion Broadcasting Co. Inc.* v. *F. C. C.,* 390 U. S. 916 (1968); 393 U. S. 1014 (1969), and see also 395 U. S. 367 (1969). This procedure may be particularly appropriate here since more than three months have now elapsed following oral argument before the Court of Appeals. The use of such a procedure would, therefore, cause only a small delay in adjudication of *Food Store Employees.*

proffered defenses to unfair labor practice charges are "frivolous" and those instances where they are "debatable." See the Board's brief in *Food Store Employees*, pp. 11-12, 15-23. The Respondent in *Food Store Employees* has urged an even broader test than that sought by the Board, i.e., that litigation costs may also be assessed even where there is a "debatable" defense. In resolving this conflict, Tiidee's totally different position—that the Board does not have the power *in any case* to award litigation costs—should also be before the Court. It is for this reason that the present petition has been submitted.

III. There Is Presently a Severe Dislocation in the Administration of the Act Which Warrants Resolution by This Court

In light of the pendency of *Food Store Employees* before this Court there can be little question as to the importance of the questions here presented and the necessity of their determination by this Court. To reiterate, however, the propriety of the award of litigation costs is an issue which may arise in every Board proceeding. It is an issue which, in other contexts,[12] this Court has deemed worthy of review. Consideration of the full implications of the question, rather than the piecemeal and incomplete adjudication possible in *Food Store Employees*, is, therefore, warranted.

A. In *Hall* v. *Cole*, 412 U. S. 1 (1973), this Court upheld the award of attorney's fees to a private litigant in a suit under § 102 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U. S. C. § 412. This Court indicated, however, that, absent a controlling statute or contrart, such an award is permissible only where it seeks to punish contemptuous conduct, where it confers "a substantial benefit on the members of an ascertain-

12. See, e.g., *Hall* v. *Cole*, 412 U. S. 1 (1973); *Mills* v. *Electric Auto-Lite Co.*, 396 U. S. 375 (1970); *Fleischmann Distilling Corp.* v. *Maier Brewing Co.*, 386 U. S. 714 (1967); *Sprague* v. *Ticonic National Bank*, 307 U. S. 161 (1939).

able class . . ." (*Mills* v. *Electric Auto Lite Co.*, 396 U. S. 375, 393-394), or possibly where the plaintiff is acting as a "private attorney general." *Hall* v. *Cole*, 412 U. S. 1, 5, n. 7 (1973). None of these considerations are present here. The Board cannot issue either compensatory, monetary or punitive awards.[13] There is, in the instant case, no common fund or class, any "private attorney general" nor need to encourage private litigation to vindicate public rights. There is no basis, in sum, to apply one of the "limited exceptions" to the general rule disfavoring the award of attorneys' fees. *Fleischmann Distilling Corp.* v. *Maier Brewing Co.*, 386 U. S. at 717-718; *Hall* v. *Cole*, 412 U. S. at 5. The present case, in contrast to *Food Store Employees*, would, in any event, permit a determination of the applicability of the *Hall* and *Fleischmann* principles to Board proceedings.

B. The award of attorneys' fees in a Board proceeding is also not warranted, in contrast to the statutory authority expressly conferred upon other agencies,[14] by either the language or legis-

13. See, e.g., *Local 60, United Brotherhood of Carpenters* v. *N. L. R. B.*, 365 U. S. 651, 655 (1961); *Republic Steel Corp.* v. *N. L. R. B.*, 311 U. S. 7, 12 (1940); and *United Automobile Workers* v. *Russell*, 356 U. S. 634, 646 (1958). For this reason, an assessment of attorneys' fees in a Board proceeding has, until the instant case and *Food Store Employees*, been restricted to contempt proceedings initiated against respondents who have wilfully violated court decrees enforcing Board orders. And even in this extreme situation, reimbursement of Board attorney fees is frequently not ordered. See, e.g., *N. L. R. B.* v. *Stafford Trucking, Inc.* (not officially published), 77 LRRM 2468 (7th Cir. 1971); and *N. L. R. B.* v. *Ralph Printing & Lithographing Co.*, 433 F. 2d 1058 (8th Cir. 1970).

14. See, e.g., Clayton Act, § 4, 15 U. S. C. § 15; Communications Act of 1934. § 206, 47 U. S. C. § 206; Copyright Act, 17 U. S. C. § 116; Interstate Commerce Act, § 16, 49 U. S. C. § 16(2); Packers and Stockyards Act, § 309(f), 7 U. S. C. § 210(f); Perishable Agricultural Commodities Act, § 7(b), 7 U. S. C. § 499g(b); Securities Act of 1933, § 11(e), 15 U. S. C. § 77k(e); Securities Exchange Act of 1934, §§ 9(e), 18(a), 15 U. S. C. §§ 78i(e), 78r(a); Servicemen's Readjustment Act, 38 U. S. C. § 1822(b); and Trust Indenture Act, § 323(a), 53 Stat. 1176, 15 U. S. C. § 77www(a).

lative history of the Act.[15] Significantly, even the substantially stronger language of Section 303 of the Act, which allows any person injured by an unlawful secondary boycott to "recover the damages by him sustained *and the cost of the suit*" (emphasis added), has been consistently construed as not authorizing the prevailing party to recover attorneys' fees. See *Teamsters Local 20* v. *Morton*, 377 U. S. 252, 260, n. 16 (1964). Moreover, "the time, expense and difficulties inherent in litigating the question of what constitutes reasonable attorney's fees would pose substantial burdens for judicial administration." *Fleischmann Distilling Corp.* v. *Maier*, 386 U. S. at 718 (citations omitted). Such a substantial burden, it is submitted, should be imposed only by this Court.

C. Finally, even assuming *arguendo* that either the Board or the courts of appeal have the power to grant a litigation cost remedy, it is necessary that this Court set the appropriate standards for the exercise of that power. For example, in the instant case the Board issued such an award in response to conduct which is not proximately related to the costs assessed. Here, after the Board's initial decision in *Tiidee I*, the alleged "frivolous" objections, the admitted basis for the unprecedented litigation cost remedy, were withdrawn. From that point forward further proceedings up to the Board's supple-

15. A specific provision permitting the Board to order violators to "pay damages", found in the Taft-Hartley Act as originally introduced (S. 2926, 73d Cong., 2d Sess. 1 Leg. Hist. of the Taft-Hartley Act, pp. 6-7), and an even milder provision allowing "restitution" (1 Leg. Hist. 2465), were later deleted following extensive hearings in both the House and Senate. The final version of the bill, as reported by both Congressional Committees, only authorized the Board ". . . to take such affirmative action, including reinstatement with or without backpay as will effectuate the policies of this Act." S. 1958, as reported, 2nd Sen. Print, II Leg. Hist. 2905; see also, H. Conf. Rep. No. 510 at 54, 80th Cong., 1st Sess., II Leg. Hist. 2931. Similarly, in considering a proposal to give the Board authority to assess damages for breach of collective bargaining agreements or in secondary boycott cases under the Taft-Hartley amendments, the chief sponsor of the bill, Senator Taft, noted that there then existed "no possibility of a suit for damages" under the Board's extant powers. 93 Cong. Rec. 4858 (1947).

mental decisions solely concerned the Union's effort to obtain extraordinary sanctions and, in particular, its unsuccessful effort to obtain a "make-whole" remedy. Such a remedy is in no way "persuasively related to the proven unlawful conduct." *N. L. R. B.* v. *Express Publishing Co.*, 312 U. S. 426, 433 (1941). Assessing Tiidee for the costs for the Union's efforts and the Government's opposition to those efforts only penalizes the Company for properly, and, indeed, for the most part successfully, resisting the imposition of a novel remedy. In sum, the award of additional costs in such a case is simply a punitive measure not calculated to reimburse the Union or the Board for any damages proximately caused by Tiidee. Such an award, if permitted, substantially modifies this Court's earlier decisions[16] and requires a clear approval by this Court.

CONCLUSION

For all the foregoing reasons, Tiidee respectfully prays that this Court grant the petition for a writ of certiorari before judgment or, alternatively, postpone decision in *Food Store Employees* until after the Court of Appeals has resolved the instant case.

Respectfully submitted,

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16. See the cases cited at n. 12, *supra*.